Supreme Court, U.S.
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95-1683

No. 95-

IN THE

Supreme Court Of The United States

OCTOBER TERM 1995

WILLIAM OSCAR HAWES,

Petitioner,

V.

COMMONWEALTH OF VIRGINIA,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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28pp

QUESTION PRESENTED FOR REVIEW

Does the Fourth Amendment guarantee a citizen's right in an automobile to be free from stops and detentions by officers who are mistaken as to what constitutes a civil automobile infraction?

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

No. 95 -

WILLIAM OSCAR HAWES,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

Petitioner William Oscar Hawes prays that a writ of certiorari be issued to review the judgment of the Supreme Court of Virginia denying his petition for appeal.

CITATION TO OPINIONS BELOW

The opinion of the Virginia Court of Appeals is unreported and is reprinted in the appendix to this petition at 1a through 2a. The order of the Virginia Court of Appeals denying rehearing is

unreported, and is reprinted in the Appendix at 3a. The order of the Virginia Supreme Court refusing petitioner's appeal from the denial of his petition by the Virginia Court of Appeals is unreported, and is reprinted in the appendix at 4a. The order of the Virginia Supreme Court denying petitioner a rehearing is unreported, and is reprinted in the Appendix at 5a.

JURISDICTION

The judgment of the Virginia Supreme Court denying petitioner's appeal was entered on November 28, 1995. A timely petition for rehearing was denied on January 19, 1996. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257, petitioner having asserted below and asserting herein deprivation of rights secured by the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fourth Amendment to the Constitution of the United States, which provides in pertinent part:

> The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . .

2. This case also involves the

Fourteenth Amendment to the Constitution of the United States, which provides in pertinent part:

> No state shall . . . enforce any law which shall abridge the privileges or immunities of citizens of the United States . . .

3. It also involves Section 18.2-266, Code of Virginia, which provides in pertinent part:

> **Driving Motor Vehicle, Engine, etc., while intoxicated, etc. -** It shall be unlawful for any person to drive or operate any motor vehicle . . . (i) while such person has a blood alcohol concentration of . . . 0.08 grams or more per 210 liters of breath . . . [1], (ii) while such person is under the influence of alcohol . . .

4. It also involves Section 46.2-1014, Code of Virginia, which provides in pertinent part:

> **Brake Lights**
> Every motor vehicle . . . shall be equipped with at least one brake light . . . such brake lights shall automatically exhibit a red . . . light

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[1] At the time of Petitioner's conviction, the blood alcohol concentration for DUI was 0.10 grams, not 0.08 grams.

> plainly visible in clear weather from a distance of 500 feet to the rear of such vehicle when the brake is applied.

STATEMENT OF THE CASE

The issue in this case is whether a police officer's mistake as to what constitutes a brake light violation can give rise to reasonable suspicion of a traffic infraction and so justify a stop and detention of the driver.

A. How the stop occurred

On New Years Day, January 1, 1994, at approximately 7:53 p.m., Deputy John Painter of the Rockbridge County Sheriff's Office was driving his patrol car behind petitioner's pick-up truck as it traveled northbound on Route 11 in Rockbridge County. [T. 6, 15][2]. Petitioner, from North Carolina and with North Carolina license plates on his vehicle, was visiting relatives in the area. [T. 19-20, 25-26]. As petitioner braked for a stoplight, Deputy Painter noticed a white light coming from the side of the right brake light lens. [T. 6]. The lights behind the lens worked properly. [T. 20-21]. Nothing obstructed the light shining back through the red lens. [T. 21-22]. Deputy Painter activated the blue lights

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[2]. Citations designated "T" are to pages of the trial transcript.

on his patrol car and pulled petitioner over to the side of the road. [T. 20]. When Deputy Painter activated his blue lights, petitioner was not free to ignore that signal and keep on driving. [T. 20]. Deputy Painter did not notice any driving irregularities, and the only reason he stopped petitioner was because of the piece broken out of the brake light lens. [T. 18-19].

After stopping petitioner, Deputy Painter conducted a search of petitioner's truck and after further investigation subsequently arrested petitioner for DUI. [T. 9-15]. At some point in the investigation, Deputy Painter told petitioner that he had stopped him because the brake light lens had a piece broken out of it and charged petitioner with defective equipment. [T. 22-23, 28].

In fact, petitioner's brake light lens violated no Virginia statutory vehicle equipment requirement. Section 46.2-1014, Code of Virginia, concerning brake light requirements, states in pertinent part: "Every motor vehicle . . . shall be equipped with at least one brake light of a type approved by the Superintendent. Such brake lights shall automatically exhibit a red or amber light plainly visible in clear weather from a distance of 500 feet to the rear of such vehicle when the brake is applied." Petitioner's equipment complied with this statutory requirement. Deputy Painter testified that nothing obstructed the light shining to the rear through the red lens. [T. 21-22]. No evidence was presented to show that petitioner's brake

light lens was of any type other than the standard, stock, approved lens that is factory fitted to all such vehicles. Even if the lens in question did not conform, no evidence indicated that the other brake light was anything but a properly functioning brake light, and Virginia law requires only one conforming brake light. Section 46.2-1014, Code of Virginia, Supra.

B. How the fact of petitioner's unconstitutional detention and search was presented and disposed of in state courts.

Petitioner initially filed a Motion To Suppress Evidence in Lexington-Rockbridge County Circuit Court, the first court of record to hear petitioner's claims. Petitioner's Exhibit 6a through 10a. In his motion, petitioner alleged that his constitutional right to be free from illegal searches and seizures was violated when the officer detained him since his cracked brake light lens met Virginia's statutory requirement for brake lights and so he was committing no statutory infraction that might justify his seizure. [8a]. The trial court judge orally denied the motion from the bench on May 25, 1994 and subsequently convicted petitioner of DUI. [T. 40-44].

On appeal, the Virginia Court of Appeals held that, even if no statutory violation occurred, the officer could detain petitioner for investigatory purposes so long as he reasonably believed that an infraction was occurring [1a through 2a]. Petitioner's appeal to the

Virginia Supreme Court, the court of last resort in Virginia, was dismissed without comment. [4a].

WHY THE WRIT SHOULD BE GRANTED

Two hackneyed cliches best describe this case: Ignorance of the law is no excuse, and what's good for the goose is good for the gander. An officer's ignorance of what constitutes an equipment violation cannot give rise to an articulable and reasonable suspicion that a motorist is subject to seizure for a violation of law. If petitioner's constitutional rights to be free from illegal seizures and searches are to be sustained, his seizure cannot be justified under the facts of this case.

A police officer may not stop an automobile and detain its occupants "except in those cases in which there is at least an articulable and reasonable suspicion that a motorist ... is ... subject to seizure for violation of law." Delaware v. Prouse, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401 (1970). The Commonwealth has the burden of proving that a warrantless stop was legal. Murphy v. Commonwealth, 9 Va. App. 139, 143, 384 S.E. 2d 125, 127 (1989).

The Virginia Court of Appeals found that, even if there were no statutory violation, if the police officer reasonably believed that a violation was occurring he could seize petitioner for investigatory purposes. This justification must fail. The Virginia

Court of Appeals confused an officer's reasonable belief that a statutory violation was occurring with the officer's ignorance of what actually constituted a statutory violation. The arresting officer in this case mistakenly thought that a violation was occurring when, in fact, no violation occurred. The question, then, is whether the arresting officer's misunderstanding of Virginia's motor vehicle statutory requirements, and his mistaken stop and detention of petitioner based on this misunderstanding, was nonetheless justifiable.

Both this Court and Virginia courts have often and repeatedly upheld warrantless searches and seizures by police officers when they observe factual situations that might seem innocuous to a layman because an officer, based on his experience and specialized training as a police officer, sees in the factual situation a reasonable suspicion of criminal activity. See, e.g., U.S. v. Cortez, 449 U.S. 411, 101 S.Ct. 690, (1981); Logan v. Commonwealth, 19 Va. App. 437, 452 S.E.2d 364 (1994). Most recently the Virginia Court of Appeals in the case of Freeman v. Commonwealth upheld the traffic stop of a driver who was traveling 10 to 15 miles per hour slower than the speed limit and weaving within his lane because the veteran police officer's observations of similar conduct over his years of experience led him to believe that the driver might be intoxicated. Freeman v. Commonwealth, 20 Va. App. 658, 460 S.E.2d 261 (1995). In upholding these stops, both state and federal courts place great emphasis on the fact that police

officers, because of their training and experience, are particularly qualified to observe potential violations.

The Virginia Court of Appeals upheld petitioner's stop and detention for exactly the opposite reason; that, because the police officer who stopped petitioner was ignorant about what constituted a statutory motor vehicle violation and was inept in performing his professional duties, he was justified in stopping and detaining petitioner. The reasons given for justifying petitioner's warrantless detention cannot logically be reconciled with both state and federal courts' long-standing deference to and reliance on the professional level of training and experience accorded to police officers.

In discussing how to evaluate the reasonableness of a detention, Terry stated the following:

> "And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or

> seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard; would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" (Footnotes omitted.)

Terry v. Ohio, 392 U.S.1, 21-22 (1968)

It can only be reasonable to expect a police officer to know the legal requirements for automobile equipment. Anything less is unreasonable and a reasonable officer would have understood that petitioner's brake light lens was not in violation. Ignorance of the law implicitly eliminates any "reasonable belief" analysis, since it is inherently unreasonable for a police officer to not know the statutory vehicle equipment requirements.

Finally, application of the exclusionary rule is the proper way to vindicate petitioner' Fourth Amendment rights. In Michigan v. Tucker, the court stated the following:

> "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct

> which has deprived the defendant of some rights. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care towards the rights of an accused.

Michigan v. Tucker, 417 U.S. 433, 447, 94 S.Ct. 2357, 2365 (1974).

To not apply the exclusionary rule would reward negligent police work and "punish" skilled work. The problem inherent in the Virginia Court of Appeals ruling is that it fails a logical "but for" test: but for the arresting officer's misunderstanding of the statutory automobile requirements, he would have had no reasonable suspicion that a violation was occurring, and so his warrantless detention of petitioner would have been unconstitutional. Put another way, if the arresting officer had known the statutory requirements for a brake light lens, he would have known that petitioner was in compliance and he would have had no constitutionally justifiable basis for stopping and detaining petitioner without a warrant. This court cannot logically accept the proposition that an arresting officer did not know the statutory requirements for a brake light lens, therefore he reasonably believed that an infraction was occurring. This holding by the Virginia Court of Appeals rewards the ignorant and inept among law enforcement officers, while it implicitly denies the

same broad constitutional powers to conscientious and knowledgeable law enforcement officers. Such is not the state today, nor should it ever be the state, of our Fourth Amendment jurisprudence concerning the powers of a law enforcement officer to stop and detain a citizen without a warrant.

CONCLUSION

For the foregoing reasons, the writ should be granted.

Respectfully Submitted

William Oscar Hawes

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P.O. Box 1258
Lexington, VA 24450
(540) 464-6306
Counsel for Petitioner

VIRGINIA:

In the Court of Appeals of Virginia on Thursday the 15th day of June, 1995.

Wilfred Oscar Hawes, Appellant,

against Record No. 1083-94-3
Circuit Court Nos. CR94000077-00 and CR94000078-00

Commonwealth of Virginia, Appellee.

From the Circuit Court of Rockbridge County

Before Judge Coleman, Retired Judges Covington and Gates*

This petition for appeal is denied for the following reasons. In reviewing a trial court's denial of a Motion to Suppress, "the burden is upon [the appellant] to show that this ruling, when the evidence is considered most favorably to the Commonwealth, constituted reversible error." Fore v. Commonwealth, 220 Va. 1007, 1010 265 S.E.2d 729, 731, cert. denied, 449 U.S. 1017 (1980).

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*Retired Judges Kenneth M. Covington and Ernest P. Gates took part in the consideration of this case by designation pursuant to the Code Section 17-116.01.

> A police officer may stop a motor vehicle, without probable cause, for investigatory purposes if he or she possesses a reasonable and articulable suspicion "that a motorist [is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise] subject to seizure for violation of law."

Bulatko v. Commonwealth, 16 Va. App. 135, 136-37, 428 S.E.2d 306, 307 (1993) (citations omitted). Code Section 46.2-1013 provides that "[e]very motor vehicle . . . shall carry at the rear a red light . . . . " Code Section 46.2-1014 provides that brake lights "shall automatically exhibit a red or amber light . . . ."

The officer testified that when appellant came to a stop at the traffic control light, the broken taillight exhibited "a bright, white light" that was "very distracting to drivers behind him." The officer stopped appellant's car to notify him of the broken taillight.

From this evidence, the police officer could have reasonably believed that the broken taillight created a driving hazard and violated Virginia motor vehicle requirements by not exhibiting a red or amber light. Therefore, the evidence supports the trial court's finding that the officer had a reasonable and articulable basis to stop the vehicle

and that the stopping for that purpose was not pretextual. Accordingly, the trial judge did not err in denying appellant's motion to suppress.

A Copy,

Teste:

Richard R. James,
Clerk
By: /s/ Marty K.P. Ring
Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Wednesday the 9th day of August, 1995.

Wilfred Oscar Hawes, Appellant,

against Record No. 1083-94-3
Circuit Court Nos. CR94000077-00 and CR94000078-00

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

Before Judge Coleman, Retired Judges Covington and Gates*

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 15th day of June, 1995 and grant a rehearing thereof, the said petition is denied.

A Copy,

Teste:

Richard R. James,
Clerk
By: /s/ Deborah S. T. Uitvlucht
Deputy Clerk

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*Retired Judges Kenneth M. Covington and Ernest P. Gates took part in the consideration of this case by designation pursuant to the Code Section 17-116.01.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 28th day of November, 1995.

Wilfred Oscar Hawes, Appellant,

against Record No. 951613
Court of Appeals
No. 1083-94-3

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court refuses the petition for appeal.

Justice Koontz took no part in the consideration of this case.

A Copy,

Teste,

David B. Beach, Clerk

By: /s/ Jennifer G. Earle
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 19th day of January, 1996.

Wilfred Oscar Hawes, Appellant,

against Record No. 951613
Court of Appeals
No. 1083-94-3

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 28th day of November 1995 and grant a rehearing thereof, the prayer of the said petition is denied.

Justice Koontz took no part in the consideration of this case.

A Copy,

Teste,

/s/ David B. Beach
Clerk

VIRGINIA:

IN THE CIRCUIT COURT LEXINGTON-ROCKBRIDGE COUNTY

COMMONWEALTH OF VIRGINIA

v.

WILFRED OSCAR HAWES

MOTION TO SUPPRESS

Defendant, WILFRED OSCAR HAWES, by and through his attorney, Ross S. Haine, pursuant to Sections 19.2-54 and 19.2-60 of the Code of Virginia, respectfully requests this Honorable Court to suppress all evidence, oral and physical, including any statements made by the Defendant, whether prior to or subsequent to his arrest, and any property seized as a result of the arrest, detention or interrogation of the Defendant. The Defendant further respectfully requests that this Court order any statement or evidence improperly obtained be excluded from any trial of charges brought against the Defendant as a result of the seizure of such evidence and, further, that such improperly obtained evidence not be used for any investigative purpose, including obtaining derivative evidence. As grounds for this motion the Defendant, by counsel, respectfully represents as follows:

The evidence mentioned above was illegally seized without a warrant in violation of Defendant's rights guaranteed by the Fourth, Sixth and Fourteenth Amendments of the United States Constitution and Article I Sections 1, 8, 10, 11 and 17 of the Constitution of the Commonwealth of Virginia.

Defendant further states he has standing to contest the legality of said seizure.

A general statement of the facts on which this motion is based is as follows:

1. On January 1, 1994, New Year's Day, at approximately 7:50 p.m., Officer J. E. Painter of the Rockbridge County Sheriff's Department stopped Defendant's vehicle because he observed that a piece was broken out of the right taillight lens cover.

2. Defendant was driving a 1993 Nissan pickup with North Carolina license plates.

3. Officer Painter stated that the only reason he stopped Defendant was because he observed the piece broken out of the plastic lens cover.

4. The lights under the cover worked properly.

5. After stopping and detaining Defendant, a member of the Rockbridge County Sheriff's Office searched the

vehicle and found a partially full champagne bottle and beer bottles in the truck. As a result of these findings, and after conducting field sobriety tests and an intoxilizer breath test, Office Painter charged Defendant with DUI.

6. Officer Painter also charged Defendant with defective equipment, a violation of Section 46.2-1003, Code of Virginia, for the taillight lens.

7. Officer Painter stated that he doesn't always pull people over for defective equipment, that he follows no guidelines in determining who he pulls over and who he doesn't pull over, that "sometimes I do, sometimes I don't."

8. In order to warrant Officer Painter stopping Defendant in his vehicle, Officer Painter must have had some reasonable suspicion of criminal activity.

9. The piece broken out of Defendant's plastic taillight lens cover does not constitute defective equipment. Defendant's lights functioned properly. Virginia's statutory equipment requirements at Chapter 10, Article 3, headed "Lights and Turn Signals," Section 46.2-1010, Code of Virginia, headed "Equipment Required", requires only that "the lights shall at all times be capable of being lighted...". Section 46.2-1013, Code of Virginia, headed "Taillights", requires that "every motor vehicle.....shall carry at the rear a red light plainly visible in clear weather

from a distance of 500 feet to the rear of such vehicle." Defendant's vehicle complied with these statutory requirements.

10. Since Defendant's vehicle complied with Virginia's statutory equipment requirements, Officer Painter had no reasonable suspicion to justify initially stopping and detaining Defendant. Defendant is not required to have perfect equipment. See, e.g., Logan v. Commonwealth, No. 2342-92-2 (Va. App., March 29, 1994). (Defendant's passenger vent window appeared broken: "....observation of a broken window, without more, does not establish a reasonable suspicion that a violation of the law had occurred or was occurring".) Commonwealth v. Caldwell, No. 1803-93-3 (Va. App., February 4, 1994). (Officer's observation of Defendant's car "tipping" as it passed through a curve on a bridge and by the officer's vehicle is not enough to constitute reasonable suspicion).

11. Even if the taillight lens could constitute defective equipment, Defendant's stop and detention by Officer Painter was an illegal pretext stop. Officer Painter only stops some of those vehicles he observes with defective equipment, and exercises completely unguided discretion in deciding whom to stop. The taillight lens in this case was merely a pretext for Officer Painter to stop and investigate Defendant, who was driving a pickup with out of state tags at night on a holiday. The automobile

exception to the warrant requirement does not apply when the detention is merely a pretext concealing an investigatory police motive. Servis v. Commonwealth, 6 Va. 507, 371 S.E. 2d 156 (1988); Reese v. Commonwealth, 220 Va. 1035, 265 S.E. 2d 156 (1988).

WHEREFORE, Defendant respectfully requests this Honorable Court grant this Motion to Suppress.

Respectfully Submitted,
WILFRED OSCAR HAWES

By: \s\ Ross S. Haine,

Ross S. Haine
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P.O. Box 1258
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CERTIFICATE

I hereby certify that a true copy of the foregoing Motion to Suppress was mailed to Eric Sisler, Commonwealth's Attorney, 6 East Washington Street, Lexington, Virginia, 24450, this 6th day of May, 1994.

\s\ Ross S. Haine